

MEMORANDUM OF UNDERSTANDING BETWEEN
THE OFFICE OF THE ATTORNEY GENERAL
AND WEBB COUNTY

Contract Number 18-C0100

This Memorandum of Understanding (the Contract) is entered into by and between the Office of the Attorney General of Texas (the OAG) and Webb County (the County) in compliance with the provisions of Texas Government Code §771 and Texas Family Code §231.002. In this Contract, the OAG and the County are referred to individually as a Party and collectively as the Parties.

I. PURPOSE AND STATEMENT OF SERVICES

In support of the OAG's duties as a Title IV-D agency, the County agrees to create and maintain a dedicated internet connection in order to provide authorized OAG personnel access to the County District Clerk case management and imaging system (County Systems).

The OAG will identify OAG personnel with a business need to access County Systems (Authorized Users). OAG personnel not identified as Authorized Users are not allowed to access County Systems. Authorized Users will ensure that any County System access information (e.g. User IDs, passwords) is kept secure, in accordance with the OAG's policy regarding system access and safeguarding passwords. The OAG agrees to comply with all OAG policies and applicable laws regarding the confidentiality of information it receives from the County.

II. TERM

This Contract is effective on April 1, 2018 and shall terminate on September 30, 2021, unless terminated earlier as provided herein.

III. FINANCIAL MATTERS

A. MAXIMUM LIABILITY OF THE OAG

Notwithstanding any other provision of this Contract, the maximum cumulative liability of the OAG under this Contract is Ten Thousand Nine Hundred and Twenty Dollars (\$10,920).

B. PAYMENT STRUCTURE

The OAG shall reimburse the County an annual service fee for the creation and maintenance of a dedicated internet connection from the OAG to Webb County. The annual service fee is due in October of each County fiscal year the Contract is in effect. The County fiscal year is from October through September.

The annual service fee for County fiscal year 2018, which includes April 2018 through September 2018, is One Thousand Five Hundred Sixty Dollars (\$1,560). Thereafter, the annual service fee shall be Three Thousand One Hundred and Twenty Dollars (\$3,120) per County fiscal year.

C. INVOICING AND PAYMENT INFORMATION

The County will submit to the OAG an invoice for the amount due for County fiscal year 2018 upon execution of this Contract. The County will submit to the OAG an invoice for the amount due for subsequent County fiscal years in October of the County fiscal year. Payment will be made upon submission of an invoice which shall be submitted in accordance with the specifications of this Contract. The OAG may decline to pay any

invoice for services or provided items not properly billed to the OAG in the next three billing cycles immediately following the month in which the County provided the services or provided items. The items invoiced must be described in the same fashion as in this Contract. Each invoice presented must include the County Name, Tax Identification Number, Address, Contact Phone Number, Contract Number, identification of services provided, and the County fiscal year for which services are billed. The County shall provide additional information and/or documentation as the OAG reasonably may require. The County shall respond to any OAG request for additional information and/or documentation to support payment within five (5) calendar days of receipt. The OAG shall not be liable for any performances rendered or obligations incurred on behalf of the OAG by the County before execution of this Contract.

The OAG will process a request for payment after it receives a properly prepared invoice and any required supporting documentation. The County shall submit invoices for payment to:

Office of the Attorney General
Accounting Division (Mail Code 003)
PO Box 12548
Austin, TX 78711-2548

D. AUDIT AND INVESTIGATION

The County understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The County further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested.

E. LEGISLATIVE APPROPRIATIONS

Any and all obligations of the OAG are subject to availability of legislative appropriations and to the availability of federal funds. The Parties acknowledge that the ability of the OAG to make any and all payments under this Contract is contingent upon the continued availability of funds for the Child Support Enforcement Strategy and the State Disbursement Unit Strategy (collectively the Strategies). The Parties acknowledge that funds are not specifically appropriated for this Contract, and the OAG's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the OAG for the Strategies for each particular appropriation period. The Parties agree that if future levels of funding for the OAG Child Support Enforcement Strategy and/or the State Disbursement Unit Strategy are not sufficient to continue operations without any operational reductions, the OAG, in its discretion, may terminate this Contract, either in whole or in part. In the event of such termination, the OAG will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The OAG shall make best efforts to provide reasonable written advance notice to the County of any such termination.

F. PROVISION OF FUNDING BY THE UNITED STATES

It is expressly understood that any and all of the OAG's obligations and liabilities hereunder are contingent upon the existence of a state plan for child support enforcement approved by the United States Department of Health and Human Services providing for the statewide program of child support enforcement, pursuant to the Social Security Act, and on the availability of Federal Financial Participation for the activities described

herein. In the event that such approval of the state plan or the availability of Federal Financial Participation should lapse or otherwise terminate, the OAG shall promptly notify the County of such fact in writing.

IV. CONTRACT MANAGEMENT

A. CONTROLLED CORRESPONDENCE

- i. In order to track and document requests for decisions and/or information pertaining to this Contract, and the subsequent response to those requests, the OAG and the County shall use Controlled Correspondence. The OAG shall manage the Controlled Correspondence for this Contract. For each Controlled Correspondence document, the OAG shall assign a tracking number and the document shall be signed by the appropriate Party's Contract Manager.
- ii. Controlled Correspondence shall not be used to change pricing or alter the terms of this Contract. Controlled Correspondence shall not be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of this Contract must be by a Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of this Contract and to document the cost impacts of proposed changes.
- iii. Controlled Correspondence documents shall be maintained by both Parties in on-going logs and shall become part of the normal status reporting process. Any communication not generated in accordance with such process shall not be binding upon the Parties and shall be of no effect.

B. NOTICES

- i. Written Notices Delivery

Any notice required or permitted to be given under this Contract shall be in writing and shall be addressed to the receiving Party at the address specified below. Notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. Notice shall be deemed to have been given on the date of certified receipt if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at the address specified below. Registered or certified mail with return receipt is not required for copies.

- i. The County address for all notices and all purposes under this Contract shall be:

Rafael Pena (or successor in office)
I.T. Director
Webb County
1110 Washington Street, Ste. 304
Laredo, TX 78040

- ii. The OAG address for all notices and all purposes under this Contract shall be:

Mara Flanagan Friesen (or successor in office)
Deputy Attorney General for Child Support (IV-D Director)
Office of the Attorney General
PO Box 12017
Austin, TX 78711-2017

with copies to:

Clayton D. Richter (or successor in office)
Transactional Attorney Manager,
Policy, Legal & Program Operations
PO Box 12017 (Mail Code 044)
Austin, TX 78711-2017

C. CONTRACT MANAGERS

i. The OAG Contract Manager is:

Karla McDougal (or successor in office)
Manager
OAG/CSD Government Contracts
PO Box 12017 (Mail Code 044)
Austin, TX 78711-2017
(512) 460-6167

Changes to this assignment shall be documented by Controlled Correspondence.

The OAG Contract Manager has the authority to:

- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- approve invoices
- coordinate meetings with the County
- investigate complaints.

The OAG Contract Manager shall have no authority to agree to any Contract amendments or pricing changes.

ii. The County Contract Manager is:

Rafael Pena (or successor in office)
I.T. Director
Webb County
1110 Washington Street, Ste. 304
Laredo, TX 78040
(956) 523-4069

Changes to this assignment shall be documented by Controlled Correspondence.

The County Contract Manager has the authority to:

- make decisions regarding Contract Services
- sign Controlled Correspondence
- serve as the day to day point of contact
- coordinate quality control reviews
- approve invoices
- coordinate meetings with the OAG
- investigate complaints

D. DISPUTE RESOLUTION

- i. Dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the OAG and the County to attempt to resolve any claim for breach of contract made by the County.
- ii. A claim for breach of contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process in Chapter 2260, Subchapter B, of the Government Code. To initiate the process, the County shall submit written notice, as required by Subchapter B, to the Deputy Attorney General for Child Support, Office of the Attorney General, PO Box 12017 (Mail Code 033) Austin, TX 78711-2017. The notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the Parties otherwise entitled to notice. Compliance with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.
- iii. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the OAG if the Parties are unable to resolve their disputes under the negotiation process.
- iv. Compliance with the contested case process is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by the OAG nor any other conduct of any representative of the OAG relating to the Contract shall be considered a waiver of sovereign immunity to suit.
- v. The submission, processing and resolution of a claim for breach of contract is governed by the published rules adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
- vi. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the County, in whole or in part.

V. AMENDMENT

The Parties may modify this Contract only through written agreement executed by duly authorized representatives of both Parties.

VI. TERMINATION

A. TERMINATION FOR CONVENIENCE

The Parties reserve the right to terminate the Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance notice, if either Party determines that such termination is in its best interest. In the event of such a termination, the County shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The OAG shall be liable for payments limited only to the portion of work the OAG authorized in writing and which the County has completed, delivered to the OAG, and which has been accepted by the OAG. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination. The OAG shall have no other liability including no liability for any costs associated with the termination.

B. TERMINATION FOR CAUSE OR DEFAULT

If the County fails to provide the contracted for commodities and or services according to the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, the OAG may, upon notice of default to the County, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under this Contract.

The OAG may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or proceed by appropriate court action to enforce the provisions of this Contract, or to recover damages for the breach of any agreement being derived from this Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the OAG notifies the County in writing prior to the exercise of such remedy. The County will remain liable for all covenants and indemnities under the aforesaid agreement. The County will be liable for all costs and expenses, including court costs, incurred by the OAG with respect to the enforcement of any of the remedies listed herein.

C. CHANGE IN FEDERAL OR STATE REQUIREMENTS

If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of this Contract, the Parties shall be discharged from any further obligations under this Contract.

D. SURVIVAL OF TERMS

Termination of this Contract for any reason shall not release either Party from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination.

VII. TERMS AND CONDITIONS

A. EQUAL EMPLOYMENT OPPORTUNITY

The County agrees to comply with all applicable duly-enacted state and federal laws governing equal employment opportunities. The County shall ensure that all subcontracts comply with the above-referenced provisions.

B. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND EXCLUSION FROM PARTICIPATION IN CONTRACTS

The County certifies by entering into this Contract, that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in this transaction by any federal department or agency.

The certification requirement of this provision shall be included in all subcontracts.

C. RECORDS RETENTION AND INSPECTION

The County shall retain all financial records, supporting documents, statistical records, and any other records, documents, papers or books (collectively referred to as records) relating to the performance called for in this Contract. The County shall retain all such records for a period of seven (7) years after the expiration of the term of this Contract, or

until the OAG or the United States are satisfied that all audit, claim, negotiation and litigation matters are resolved, whichever period is longer. The County shall grant access to all such records to the OAG, the State Auditor of Texas, the United States Department of Health and Human Services and the Comptroller General of the United States (or any of their duly authorized representatives) for the purposes of inspecting, auditing, or copying such records. The requirements of this provision shall be included in all subcontracts.

D. ENVIRONMENTAL PROTECTION

The County shall be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)) Section 508 of the Clean Water Act (33 USC 1368) Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The requirements of this provision shall be included in all subcontracts that exceed \$150,000.

E. CERTAIN DISCLOSURES CONCERNING LOBBYING

The County shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Acts of 1989, and the regulations of the United States Department of Health and Human Services promulgated pursuant to said law, and shall make all disclosures and certifications as required by law. The County must submit with its response the Certification Regarding Lobbying included with this Contract. This certification certifies that the County will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. It also certifies that the County will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. The requirements of this provision shall be included in all subcontracts exceeding \$100,000.

F. NO IMPLIED AUTHORITY

Any authority delegated to the County by the OAG is limited to the terms of this Contract. The County shall not rely upon implied authority and specifically is not delegated authority under this Contract to:

- i. Make public policy;
- ii. Promulgate, amend, or disregard OAG Child Support program policy; or
- iii. Unilaterally communicate or negotiate, on behalf of the OAG, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency. However, the Contractor is required to cooperate fully with the OAG in communications and negotiations with federal and state agencies, as directed by the OAG.

G. NEWS RELEASES OR PRONOUNCEMENTS

The OAG does not endorse any vendor, commodity, or service. No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of the OAG.

H. NON-WAIVER OF RIGHTS

Failure of a Party to require performance by another Party under this Contract will not affect the right of such Party to require performance in the future. No delay, failure, or

waiver of either Party's exercise or partial exercise of any right or remedy under this Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of this Contract will not be construed as a waiver of any continuing or succeeding breach. Should any provision of this Contract be invalid or unenforceable, the remainder of the provisions will remain in effect.

I. NO WAIVER OF SOVEREIGN IMMUNITY

THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY THE OAG OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE OAG OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

J. SEVERABILITY

If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

K. HEADINGS

The headings for each section of this document are stated for convenience only and are not construed as limiting.

L. ENTIRE CONTRACT

This document represents the entire Contract between the Parties. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied on this document.

M. COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THIS CONTRACT IS HEREBY ACCEPTED.

OFFICE OF THE ATTORNEY GENERAL

WEBB COUNTY

Mara Flanagan Friesen
Deputy Attorney General for Child Support
(IV-D Director)

The Honorable Tano E. Tijerina
County Judge, Webb County

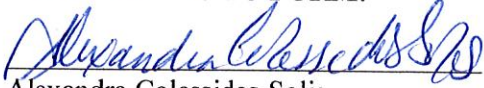
Signature Date

Signature Date

The Honorable Margie Ibarra
County Clerk, Webb County

Signature Date

APPROVED AS TO FORM:



Alexandra Colessides-Solis

Webb County Civil Legal Division Director

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court
On March 26, 2018; Item No. 6b.